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govern its employees in the performance of every simple service they may be called on to discharge. Something must be left to the care and discretion of the employees themselves.

PENNYBACKER V. MAUPIN AND OTHERS.—Decided at Richmond, November 17, 1898.—*Harrison, J.* Absent, *Riely and Cardwell, JJ.*

1. **SPECIFIC PERFORMANCE**—*Terms on which granted*—*Case in judgment.* Every application for the specific performance of a contract is addressed to the sound judicial discretion of the court regulated by established principles. The contract must be distinctly proved, and its material terms clearly ascertained. It must be reasonable, certain, legal, mutual, based upon a valuable consideration, and the party seeking performance must not have been backward in enforcing his rights, but ready, desirous, prompt and eager. In the case in judgment the contract is not proved to the satisfaction of the court, there has been long delay in seeking its enforcement, and the claim asserted is barred by the statute of limitation.

MONGER V. ROCKINGHAM HOME MUTUAL FIRE INS. CO.—Decided at Richmond, November 17, 1898.—*Keith, P.* Absent, *Cardwell and Riely, JJ.*

1. **MUTUAL FIRE INSURANCE**—*Case at bar*—*Membership*—*Assessments.* The plaintiff became a member of the defendant company by an original certificate of membership issued to her in pursuance of the constitution of the defendant company, and having paid all assessments made against her, is, under the evidence in the case, entitled to recover for the loss sustained by her under the contract of insurance made with her. As assessments for losses are merely personal debts and not liens on the property, under the terms of the constitution of the defendant company, she is not liable for prior assessments made against her father under a certificate of membership held by him, as she does not claim under or in privity with him, but under certificate as an original member of the company.

2. **INSURANCE**—*Failure to pay assessments*—*Forfeiture*—*Waiver.* Where a forfeiture of an insurance policy for non-payment of assessments is relied on, the fact that subsequent assessments are made and received by the company, without making any reference to the non-payment of the prior assessment, is evidence tending to show a waiver of the forfeiture, and should be submitted to the jury under proper instructions. When the right to rely upon a forfeiture has been once waived it is extinguished and cannot be revived.

RORER AND OTHERS V. FERGUSON AND OTHERS.—Decided at Richmond, November 17, 1898.—*Keith, P.* Absent, *Riely and Cardwell, JJ.*

1. **SUBROGATION**—*Payment of judgment by sureties in a forthcoming bond.* A surety in a forfeited forthcoming bond who has paid the debt is entitled to be substituted to all the rights of the creditor against the principal debtor subsisting at the time he became surety, and to recover of him the full amount of the original judgment of the creditor against him.

2. **MERGER**—*Purchase of land by one holding a lien thereon*—*Other encumbrances.* The acquisition of the legal title to land on which one holds a lien does not necessarily merge the lien. It is a question of intention. In the absence of an express